

IN THE MATTER OF	:	BEFORE THE
TSC/JMJ WATERLOO ROAD, LLC	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 08-042V

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DECISION AND ORDER

On January 5, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of TSC/JMJ Waterloo Road, LLC, for variances to: (1) reduce the 75-foot use setback from a residential district up to 8.2 feet for parking uses and a retaining wall, and (2) reduce the 30-foot structure or use setback from a public street right-of-way to 14.4 feet for parking uses for a three-story office building in a POR (Planned Office Research) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Richard Talkin, Esquire, represented the property owner. Robert Vogel testified on behalf of the Petitioner. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, known as 5511 and 5513 Waterloo Road, is located in the 1st Election District at the northeast corner of the Falls Run Road intersection with MD 108 (Waterloo Road) (the "Property"). The Property is identified on Tax Map 31, Grid 19, as Parcels

428 and 467. Parcel 428 parcels lies entirely within the 75-foot use and structure residential setback.

2. The Property is rhomboidal in shape, and contains about 3 acres. It is about 670 feet long and about 163 wide. The Property is wooded and unimproved except for a single-family dwelling located in the southwest portion of the lot. (The dwelling is being removed). The site slopes down about 70 feet from the road frontage to the rear of the lot, although the center of the Property is relatively level.

3. Vicinal properties include:

(a) To the north of the Property are several POR zoned lots fronting on Waterloo Road. Parcel 427, to the immediate north, is the site of a Howard County moderate income housing complex under construction (Elliott Gardens).

(b) To the east and southeast is the R-SA-8 zoned Ashton Woods apartment complex. The portion of the apartment complex immediately to the south is wooded open space. Beyond this is a parking lot for one of the apartment buildings.

(c) To the west across Waterloo Road are various R-20 zoned properties containing single-family detached dwellings.

4. The Petitioner proposes to construct on the Property a three-story, 50,000 square foot (16,500 square feet per floor) building with an underground garage to be located near the center of the site about 10 feet from the north side lot line. According to Robert Vogel, the proposed use will share a driveway (with restricted ingress and egress lanes) with the adjoining Howard County moderate-income housing complex and the complex will share some of the office parking spaces.

5. The building will be surrounded by associated parking for 225 vehicles. Some of the parking spaces will be located as close as about 9 feet from the south lot line and others will be located as close as 14 feet from Waterloo Road. At its closest, the retaining wall will be about 8 feet from the southeast lot line. The parking spaces and retaining wall therefore encroach about 67 feet into the required 75-foot setback from a residential district required by Section 115.D.3.a, and about 16 feet into the required 30-foot setback from a public street right-of-way required by Section 115.D.3.c.

6. Waterloo Road is a minor arterial road with two northbound and two southbound lanes and a left-turn lane at Falls Run Road, with variable pavement width within a variable width right-of-way. The posted speed limit in the area of the Property is 45 miles per hour. The DPZ report indicates that sight distance from the proposed driveway entrance is over 600 feet in each direction.

7. According to the DPZ report, and Robert Vogel's testimony, most of the other POR zoned properties in the area are significantly wider than the Property. Given the required setbacks, the building envelope for the site is only 110 feet wide and 550 feet long.

8. Zoning History. In BA case No. 06-005V, the Board of Appeals Hearing Examiner approved variances to reduce the required 75-foot setback from a residential district to 10 feet for parking uses and 64 feet for a 5-story building, and to reduce the 30 foot use setback from a public street right-of-way to 14 feet for parking (April 24, 2006). This variance has lapsed.

9. Robert Vogel testified that the County, which is constructing the Ellicott Gardens Housing complex on the adjoining property, worked with the developer in this case to accommodate both projects. He also demonstrated by reference to the Waverly Woods site

development plan that the nearest apartment building in Waverly Woods is more than 200 feet away from any parking space. It was also his opinion that the size of the building was reasonable for the area.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

- (1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.
- (2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.
- (3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.
- (4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variances comply with Section 130.B.2.a(1) through (4) and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the

property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property is unusually narrow for a POR zoned parcel. This narrowness is exacerbated by the fact that the Property is surrounded on two sides by R-SA-8 zoned land and a public street right-of-way on a third side. Consequently, the site has at most only a 110-foot wide building envelope, which is insufficient space in which to construct a reasonably sized POR facility with associated parking. These structures and uses could not be practically located on the Property without variances. There is also a severe elevation difference, about 70 vertical feet of fall from west to east. Consequently, I find that the narrowness of the Property and its topography are unique physical conditions causing the Petitioner practical difficulties in complying with the setback requirements, in accordance with Section 130.B.2.a(1).

The proposed parking and retaining wall will be used for permitted business purposes. The areas of encroachment are generally to the south, which adjoins an unimproved open space area and Falls Run Road. The southernmost area of encroachment, while closer physically to the Ashton Woods development, will have minimal impact on the nearby parking lot, being 200 feet from the nearest apartment building. The DPZ report recommends that the Petitioner should show how the nearby apartment buildings would be screened from the glare of headlights.

Although any such glare will be mitigated by distance (200 feet), in the absence of any elevation drawings with the petition, however, as a condition of approval, I am requiring the Petitioner to consult with the Department of Planning and Zoning at the site development plan phase to determine whether some form of screening is necessary. Subject to this condition, I conclude the variances, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

2. The practical difficulties in complying strictly with the setback regulations arise from the Property's narrowness and location, and were not created by the Petitioner, in accordance with Section 130.B.2.a(3).

3. The proposed structure is located in the north-central portion of the site. The parking surrounds the building and cannot feasibly be located elsewhere on the Property and the retaining wall is necessary to support the parking. Within the intent and purpose of the regulations, then, the variances are the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this 12th day of January 2009, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

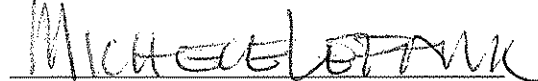
That the Petition of TSC/JMJ Waterloo Road, LLC, for variances to: (1) reduce the 75-foot residential setback up to 8.2 feet for parking uses and a retaining wall, and (2) reduce the 30-foot structure or use setback from a public street right-of-way to 14.4 feet for parking uses for an office building in a POR (Planned Office Research) Zoning District, is **GRANTED**;

Provided, however, that:

1. The variances will apply only to the uses being requested and not to any new structures, uses, or change in uses on the subject property or to any additions thereto.
2. The Petitioner shall consult with the Department of Planning and Zoning at the site development phase to determine if screening is necessary to mitigate headlight glare into any Ashton Woods apartment buildings.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Michele L. LeFaivre

Date Mailed: 1/13/09

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.